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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/875,553 | 06/07/2001 | Norbert P. Sonnek | | 6890 |

7590 05/23/2003
Norbert P. Sonnek
56721 - 190th Street
Wells, MN 56097

EXAMINER

ALIMENTI, SUSAN C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3644

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/875,553

Applicant(s)

SONNEK, NORBERT P.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The amendment filed 3 March 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. An example of the added material, which is not supported by the original disclosure is as follows: On page 4 of the aforementioned amendment, lines 14-20 citing "The prototype of the present invention... and scamper up a smooth, round surface." While there are many more instances of unsupported subject matter, such an exhaustive citation will not be listed as the Applicant is advised to review the original disclosure and delete all new subject matter recently filed.

Claim Rejections - 35 USC § 112

2. Claims 1, 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the ducklings" in line 5. There is insufficient antecedent basis for this limitation in the claim.

In claim 4, line 3 the phrase "a water closet fitting to the top of said pole to secure said pole to bottom of said duck nesting house", is awkward and confusing. More specifically, the terminology "a water closet fitting" is not clearly defined, therefore the structure is unclear.

In claim 5, line 3 the phrase "a water closet fitting to the top of the top pole segment to secure to the bottom of said duck nesting house", is awkward and confusing. It is suggested

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that said phrase --a bracket attached to the bottom of said duck nesting house for securing said house to the top of said top pole segment--.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wade et al. (US 3,643,631), and further in view of Bennett (US 5,740,762).

Wade et al (hereafter Wade) discloses the claimed invention except the bird house is not cylindrical in shape and made of a white plastic material. Wade's birdhouse, as viewed in Figures 1-6, comprises a main canister, an entrance hole 32, a removable lid 22, and a handle defined as flange 42. A mesh grid 76', 76'' is secured to said birdhouse at the bottom and sidewall 16 with rivets 78. Wade also explains how the mesh functions as a ladder for young bird to use to climb out of the birdhouse in column 4, lines 16-19. Bennett discloses a cylindrical birdhouse made of PVC (Bennett, col. 5, lines 8-9), which is a white plastic material as described by Bennett. PVC is a well known material that is light weight, cost effective, and reflects light providing more ambient temperatures for the animals housed therein. It would have been obvious to one of ordinary skill in the art to modify Wade's birdhouse by constructing it of PVC, since it has been held to be within the general skill of a worker in the art to select a known

material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wade, in view of Bennett, and further in view of Sonnek (US 6,405,679).

Wade, as modified, discloses the claimed invention as best understood, except the bird house is not supported by a telescoping pole made of white plastic material. Sonnek discloses a bird house that is centrally supported by a telescoping pole as seen in Figure 9. Sonnek's support comprises a top pole 30 fitted with collar 35, which slides inside a bottom pole 31 that has a slightly larger diameter. A bracket 40 (See Examiner's reference numeral, Fig. 9) secures the top pole segment to the bottom of the birdhouse, and an end cap 36 is fitted to the bottom of the bottom pole segment 31. Sonnek discloses that the bird house is entirely made from a white plastic material, PVC (col. 2, lns. 65-67), and advantages to using this material, are among others, to provide for little to no maintenance (col. 2, lns. 25-64). It is noted that the use of a pole support system is a known equivalent in the art, to Wade's tree hanging bird house. It would have been obvious to one skilled in the art at the time the invention was made to modify Wade's birdhouse by supporting it above the ground with a telescoping pole made of a white plastic material in order to provide a height adjustable support system that is easy and inexpensive to maintain.

Response to Arguments

6. Applicant's arguments filed 3 March 2003, have been fully considered but they are not persuasive. In response to Applicant's arguments that claims 1, 4 and 5 should not be rejected as

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being indefinite because said claims “written by an amateur, do not withstand correct examiner scrutiny” the Examiner respectfully disagrees and maintains that the subject matter is unclear as written.

Applicant should submit an argument under the heading “Remarks” pointing out disagreements with the examiner’s contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. The Applicant is reminded to focus on the structure of the invention as cited in the claims, as it is the limitations written in the claims that must overcome the limitations of the prior art cited by the Examiner.

7. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Thursday, 8am-6pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Susan C. Alimenti
May 21, 2003

Charles T. Jordan
JAMES T. JORDAN
JUNIOR, NEW PATENT EXAMINER
TECHNOLOGY CENTER 3600